

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

INDIVIDUAL WETLAND PERMIT AND DETERMINATION

In the matter of:

Bradley Steller
54 Sherman Hollow Road
Hinesburg, VT 05461

**Application for the After-the-Fact construction of an access road with impacts to
1,130 square feet of wetland and 8,000 square feet of buffer zone.**

Palmer Lane, Richmond

File #: 2020-357

DEC ID #: EJ20-0273

Date of Decision: [DATE]

Permit Decision: "[**Approved or Denied**]"

Wetland Determination: **Class II**

Permit Expiration: MONTH, DAY, 2025

Any activity in a Class I or Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the Vermont Wetland Rules (VWR) or unless it receives a permit allowing such activity. 10 V.S.A. § 913. Applicants for an individual permit for a proposed activity in any Class I or Class II wetland or its buffer zone must demonstrate that the proposed activity complies with the VWR and will have no undue adverse effects on protected functions and values. VWR § 9.5(a).

The Secretary may, upon a petition or on his or her own motion, determine whether any wetland is a Class II wetland or a Class III wetland, pursuant to 10 V.S.A. § 914 and the Vermont Wetland Rules, Vt. Code R. 12 004 056 (VWR). The Secretary may establish the necessary width of a buffer zone of any Class II wetland as part of any wetland determination pursuant to the Rules.

As required under 10 V.S.A. § 914 and Section 8 of the VWR, this wetland determination is based on an evaluation of the functions and values of the subject wetland as described in Section 5 of the VWR. Public notice of this wetland determination has been given in accordance with Section 8.3 of the VWR.

The Vermont Agency of Natural Resources (Agency) received an application and petition (application) dated July 21, 2020 from Bradley Steller (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Richmond, Vermont. The Agency gave notice of the application in accordance with the VWR. The Agency considered all comments received during the public comment period during review of the application and issuance of this permit.

EXHIBIT 2

DECISION AND PERMIT CONDITIONS

- I. Based on the Findings contained in this permit below, the Secretary has determined that the project will comply with 10 V.S.A. chapter 37 and the VWR and will have no undue adverse effect on protected functions and values of the wetland. The permittee has demonstrated that the project will have no undue adverse effects on the protected functions and values of the significant wetland and associated buffer zone, provided the project is conducted in accordance with the following conditions:
 - A. All activities in the wetland and buffer zone shall be completed, operated, and maintained as set forth in the permit application #2020-357 and the supporting materials submitted with the permit application including site plans titled:
 - “Wetland Overview Plan”; designed by Fitzgerald Environmental Associates, LLC , dated 7/14/2020
 - “Wetland/Road Detailed Plan”; designed by Fitzgerald Environmental Associates, LLC 7/14/2020
 - B. No material or substantial changes shall be made to the project without the prior written approval of the Vermont Wetlands Program. Project changes, including transfer of property ownership prior to commencement of a project, may require a permit amendment and additional public notice.
 - C. The permittee shall record the issuance notice in the land records of the Town of Richmond for all properties subject to the permit. Within 30 days of the date of issuance of this permit, the permittee shall supply the Vermont Wetlands Program with a copy of the recording of the issuance notice¹.
 - D. Prior to commencement of the approved project, the permittee shall notify the Vermont Wetlands Program electronically in writing of the date the project will commence.
 - E. Mitigation to further minimize impacts is required and shall consist of the naturalization of 7,831 sf of Class II wetland and 5,758 sf of Buffer Zone as shown on the permit site plan. This “no mow” zone shall be permanently demarcated on the eastern wetland buffer’s edge.
 - F. **Prohibitions:** No additional activities are allowed in the wetland and associated buffer zone without the approval of the Secretary unless such activities are allowed uses under VWR § 6. No draining, dredging, filling, grading, or alterations of the water flow is allowed. No cutting, clearing, or removal of vegetation within the wetland and buffer zone is allowed with the exception of the proposed project area as approved by this permit.
 - G. This permit expires five years from the date of issuance. If the permittee has not completed all construction activities covered by this permit before the expiration date and wishes to continue construction, the permittee must request a permit extension or

¹ Reporting forms are located here: <https://auroonline.vermont.gov/>

apply for a new permit. Any request for an extension must be received by the Agency at least 30 days prior to the end of the five year period in order to prevent the expiration of the permit. A request for extension may be considered a minor modification at the discretion of the Secretary. Pursuant to VWR § 9.1, projects may not be extended beyond ten years of the issuance date.

- H. Wetland boundary delineations are valid for five years. The delineations will need to be re-evaluated by a qualified wetland consultant if the project is not constructed during the five-year period and a request for an extension is submitted.
- I. Within 30 days of completion of the work approved by this permit, the permittee shall supply the Vermont Wetlands Program with a letter certifying that the project was constructed in compliance with the conditions of this permit.
- J. If a stormwater construction permit is obtained for this project, the erosion prevention and control requirements of that permit shall be followed. At minimum, the permittee shall comply with the following: A continuous line of silt fence shall be properly installed by the permittee immediately upgradient of the snow fence or tape prior to any construction and shall be regularly maintained. Care shall be taken to ensure that silt fence is installed on the contour and not in areas of concentrated flow such as stream channels or ditches. Sediment shall be cleaned out before and after any significant storm event or when sediment has reached less than half the height of the fence. Removed sediments shall be disposed of in a stable, upland area outside the 50-foot buffer zone at least 100 feet from waters of the state and stabilized immediately with seed and mulch at a minimum. All other disturbed soils shall be seeded and mulched within 48 hours of final grading. All sediment barriers and construction fencing shall be removed following the successful establishment of vegetation.
- K. If a stream alteration permit is obtained for this project, the requirements of that permit shall be followed. If no stream alteration permit was required, the permittee shall comply with the following: The method of installing two 18" HDPE culverts shall be that which presents the least disturbance of stream flow and prevents any discharge of sediment downstream. Stream flow at all times shall be diverted from the work area. The contractor's equipment shall be clean and well maintained, free of fuel, hydraulic, and gear oil leaks, especially if such equipment is to be used in or adjacent to the water. There shall be absolutely no discharge of uncured concrete to the stream flow. Pumping from excavation areas shall be discharged to an overland area or settling basin such that the effluent shall be essentially clarified before reentering the stream flow. All areas of stream bank disturbed during construction shall be suitably reshaped and stabilized with stone fill or a vegetative planting prior to completion of the project. Additionally, the extent of stream bank disturbance shall be strictly limited, and all existing vegetation maintained to the greatest degree practicable. Stream work shall be limited to the period June 1 to October 1. Culvert invert elevations shall be installed six inches below the stream bed level.
- L. All contractors' equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species. The permittee shall monitor the portion of the wetland in question annually during early July for five years following construction for the nuisance plant species

purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). All nuisance plants found shall be pulled by hand and disposed of by burial or burning in a non-wetland location. If hand pulling is not feasible, a state approved invasive species control plan is required.

2. The Secretary maintains continuing jurisdiction over this project and may at any time order that remedial measures be taken if it appears that undue adverse impacts to the protected functions and values of the wetland or buffer are occurring or will occur.
3. This permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.
4. The permittee shall allow the Secretary or the Secretary's representatives, at reasonable times and upon presentation of credentials, to enter upon and inspect the permitted property for the purpose of ascertaining compliance with this permit, the VWR, and the Vermont Water Quality Standards, and to have access to and copy all records required to be prepared pursuant to this permit.
5. The Agency accepts no legal responsibility for any damage direct or indirect of whatever nature and by whomever suffered arising out of the approved project. This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to public or private property, or any invasion of personal rights, or any infringement of federal, state, or local laws or regulations. This permit does not obviate the necessity of obtaining such federal, state, or local permits or approvals as may be required by law. Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under other laws.
6. Within 15 days of the date of the decision, the permittee, any person entitled to notice under VWR § 9.2, or any person who filed written comments regarding the permit application may request in writing reconsideration of the decision by the Secretary in accordance with VWR § 9.6.

DETERMINATION DECISION

1. Based on the Findings listed below, the Secretary has determined that the wetland under consideration is a Class II wetland.
2. Unless otherwise designated by the Secretary, a fifty (50) foot buffer zone is established contiguous to the boundaries of a Class II wetland. VWR §4.2.
3. **Effect of Class II Wetland Determination** Activity in a Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the VWR, or unless it is authorized by a permit, conditional use determination or order issued by the Secretary. The Secretary may impose any permit conditions as necessary to achieve the purposes of the VWR. Section 9.1 of the VWR. This Determination does not relieve the petitioner or any other person of the responsibility to comply with all other applicable federal, state or local laws.

The attached mapping of the wetland shall be added to the Vermont Significant Wetlands Inventory.

4. **Reconsideration of Wetlands Determination** Within 15 days of the date of this decision, the applicant, any person entitled to notice under Section 8.3(a) of the VWR, or any person who filed written comments regarding the permit application may request in writing reconsideration by the Secretary. Section 8.4 of the VWR. Such a request shall specify all action(s) for which reconsideration is sought and shall provide an explanation of the reason(s) why the request is filed. Where a request for reconsideration has been properly filed, additional evidence may be submitted concerning the functions and values of the wetland, and concerning any other material issue as deemed appropriate by the Secretary. The Secretary may appoint a designee, who shall be at the Division Director level or higher, to render a decision on the request for reconsideration. The Secretary's written reconsideration decision shall be issued as expeditiously as possible under the circumstances, and shall be distributed in accordance with §8.3(c) of the Wetland Rules. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied. The Secretary's written reconsideration decision shall constitute a final act or decision of the Secretary, subject to appeal pursuant to 10 V.S.A. § 8504 and Section 10 of these Rules.
5. No request for reconsideration may be filed concerning or resulting from a request for reconsideration. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied.
6. Filing a timely request for reconsideration with the Secretary tolls the 30-day period for filing an appeal with the Environmental Court. The full time for appeal shall commence to run and shall be computed from the date of the issuance of the Secretary's decision on the reconsideration request.

GENERAL CONDITIONS

The following conditions shall apply to both the wetlands permit and determination:

7. **Appeals.** Any person with an interest in this matter may appeal this decision pursuant to 10 V.S.A. § 917. Pursuant to 10 V.S.A. chapter 220, an aggrieved person shall not appeal this permit to the Environmental Division of the Vermont Superior Court unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary. Absent a determination of the Environmental judge to the contrary, an aggrieved person may only appeal issues related to the person's comments to the Secretary as prescribed by 10 V.S.A. § 8504(d)(2). Any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and

description of the property, project, or facility with which the appeal is concerned; the name of the permittee; and any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401 (Tel. # 802-951-1740).

FINDINGS

1. The Agency received a complete permit application and determination petition from Bradley Steller for a Vermont Wetland Permit and wetland determination on July 21, 2020.
2. The wetland and adjacent 50-foot buffer zone are located south of Palmer Lane and borders the Richmond- Hinesburg town lines. The wetland drains to the Johnnie Brook, approximately a half mile south west of the wetland.
3. Tina Heath, District Wetlands Ecologist, conducted a site visit to the subject property with Don Palmer, Evan Fitzgerald, Brad Steller, and Rodrigue Spinette on 6/10/2020.

The wetland meets the presumptions listed in VWR § 4.6, the wetland is of the same type and threshold size as those mapped on the VSWI maps or greater than 0.5 acres (VWR §4.6a).

4. The wetland in question is described in detail in Sections 4 and 5 of the permit application. The wetland is approximately 3.5 acres in size and consists of 60% forested wetland, 20% scrub shrub, and 20% wet meadow. The wetland is adjacent to unnamed streams that flow south west to the Johnnie Brook. The main sources of hydrology come from the streams and ground water seepage. Dominant vegetation in the forested and scrub shrub areas include speckled alder, dogwood, and birch. Wet meadow vegetation consists of sweet vernal grass, orchard grass, sensitive fern, and rough goldenrod. Soils are mapped as Cabot hydric soils are characterized as a depleted matrix (F3).
5. The project is described in detail in Sections 17 and 18 of the permit application. The project consists of the **After-the-Fact construction of an access road.**
6. Impacts to the wetland and buffer zone, summarized in Section 19 of the permit application are as follows:

Wetland Alteration:		Buffer Zone Alteration:	
Wetland Fill:	1,130 sq.ft.		
Temporary:	0 sq.ft.	Temporary:	0 sq.ft.
Other Permanent:	0 sq.ft.	Permanent:	8,000 sq.ft.
Total Wetland Impact	1,130 sq.ft.	Total Buffer Zone Impact:	8,000 sq.ft.

7. The protected functions of the wetland include the following: water storage for flood water and storm runoff (VWR § 5.1), surface and groundwater protection (VWR § 5.2), fish habitat (VWR § 5.3), wildlife (VWR § 5.4), and erosion control through binding and stabilizing the soil (VWR § 5.10).
8. The following functions are either not present or are present at such a minimal level as to not be protected functions: exemplary wetland natural community (VWR § 5.5), threatened and endangered species habitat (VWR § 5.6), education and research in natural sciences (VWR § 5.7), recreational value and economic benefits (VWR § 5.8), and open space and aesthetics (VWR § 5.9).
9. The wetland is significant for water storage for flood water and storm runoff function as demonstrated in Section 7 of the permit application. Based on the factors described in Section 7.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
10. The wetland is significant for the surface and ground water protection function as described in Section 8 of the permit application. Based on the factors described in Section 8.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
11. The wetland is significant for the fish habitat function as described in Section 9 of the permit application. Based on the factors described in Section 9.2 of the application as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
12. The wetland is significant for the wildlife habitat function as described in Section 10 of the permit application. Based on the factors described in Section 10.2 of the application as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
13. The wetland is significant for the erosion control function demonstrated in Section 16 of the permit application. Based on the factors described in Section 16.2 of the application as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
14. Under 10 V.S.A. § 913 and VWR § 9.5, the Secretary may authorize activities in a Class II wetland or in its buffer zone if the Secretary determines that it complies with the VWR and will have no undue adverse effect on the protected functions and values. Based on the permit application, the site visit(s) by Agency staff, and the foregoing findings and analysis, the Secretary has determined that the project will have no undue adverse effects on the protected functions and values of the Class II wetland.
15. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the activity in the wetland cannot practicably be located outside the wetland or on another site owned, controlled, or available to satisfy the basic project purpose. All practicable measures have been taken in this proposal to avoid adverse impacts on protected functions, as described in the application.

In summary, the permittee has been able to demonstrate that wetland impacts were unavoidable and have been minimized to the most practicable extent. There is unavailable

upland space before the wetland crossing to satisfy the project purpose, and the road was built in the narrowest portion of the wetland on the subject property. The access road follows an existing farm road that has been in existence for decades. To further minimize impact, larger culverts will be installed to ensure adequate drainage and hydrology to the wetland system. Additionally, 7,831 sf of wetland and 9,020 sf of buffer zone will be memorialized as a "no mow zone" and will be discontinued from management and be allowed to naturalize.

16. "[# of public comments received. Address here as needed]" **OR** No public comments were received during the public comment period.

Peter Walke, Commissioner
Department of Environmental Conservation

by: _____
Laura Lapierre, Program Manager
Wetlands Program
Watershed Management Division

Dated at Montpelier, Vermont
this # day of MONTH 2020

PW/LVPL/TMH